

FILED

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U.S. DISTRICT COURT  
N.D. OF ALABAMAIN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION

JAMES McCONICO, III,

Plaintiff,

vs.

CV -01-RRA-0036-M

COMMISSIONER MICHAEL HALEY,  
WARDEN STEVEN DEES &  
ELEANOR COACHMAN,

Defendants.

ENTERED  
AUG 23 2001


atp

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on July 27, 2001, recommending that this action, filed under 42 U.S.C. § 1983, be dismissed pursuant to 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief can be granted. [Document #13]. The plaintiff filed objections to the report and recommendation on August 7, 2001. [Document #14].

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. Accordingly, the complaint is due to be dismissed, pursuant to 28 U.S.C. § 1915A(b), for failure to state a claim upon which relief can be granted. A Final Judgment will be entered.

DATED this 22<sup>nd</sup> day of August, 2001.

  
U.W. CLEMON  
CHIEF UNITED STATES DISTRICT JUDGE

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UNITED STATES COURT OF APPEALS

Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

Thomas K. Kahn  
Clerk

In Replying Give Number  
Of Case and Names of Parties

NOTICE TO PRISONERS CONCERNING CIVIL APPEALS

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The Prison Litigation Reform Act of 1995 (effective April 26, 1996) now **REQUIRES** that all prisoners pay the Court's \$100 docket fee plus \$5 filing fee (for a total of \$105) when appealing any civil judgment.

If you wish to appeal in a civil case that Act now **requires** that upon filing a notice of appeal you *either*:

- (1) Pay the total \$105 fee to the clerk of the district court from which this case arose;  
*or*
- (2) arrange to have a prison official certify to the district court from which the appeal arose the average monthly deposits and balances in your prison account for each of the six months preceding the filing of a notice of appeal.

If you proceed with option (2) above, the Act requires that the district court order you to pay an *initial partial fee* of at least 20% of the **greater** of either the average monthly deposits or of the average monthly balances shown in your prison account. The remainder of the total \$105 fee will thereafter be deducted from your prison account each month that your account balance exceeds \$10. Each such monthly deduction shall equal 20% of all deposits to your prison account during the previous month, until the total \$105 fee is paid. (If your prison account statement shows that you cannot pay even the required *initial partial fee*, your appeal may nevertheless proceed, BUT THE TOTAL \$105 FEE WILL BE ASSESSED AGAINST AND WILL BE DEDUCTED FROM FUTURE DEPOSITS TO YOUR PRISON ACCOUNT.)

Fees are not refundable, regardless of outcome, and deductions from your prison account will continue until the total \$105 fee is collected, even if an appeal is unsuccessful.

THOMAS K. KAHN  
Clerk